

Message Text

CONFIDENTIAL

PAGE 01 STATE 177759

42

ORIGIN EA-09

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 INRE-00 SSO-00 NSCE-00

USIE-00 OMB-01 /051 R

DRAFTED BY DOD:LEGAL DRAFTING GROUP:BALLEN

APPROVED BY EA - MR. MILLER

DOD/ISA:MABRAMOWITZ (DRAFT)

DOD/ISA/FMRA:SGOLDSMITH (DRAFT)

L/EA:EVERVILLE (DRAFT)

PM/ISO:GCHURCIHILL (DRAFT)

EA/PHL:BFLECK (DRAFT

----- 051428

O R 171524Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

INFO SECDEF

JCS

CINCPAC

CINC PACAF

CINCPACFLT

RHMOGOA CINCPACREPHIL

CG 13THAF

C O N F I D E N T I A L STATE 177759

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: TITLE TO NON-
REMOVABLE STRUCTURES

REF: (A) MANILA 10216 (US DEL 117), (B) STATE 165071

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 177759

1. IN VIEW OF YOUR ASSESSMENT THAT RECOGNITION OF

PHIL OWNERSHIP OF BUILDINGS AND OTHER PERMANENT CONSTRUCTIONS IS NECESSARY TO ACHIEVE PROGRESS ON ISSUES IMPORTANT TO US, WE ACCEPT YOUR RECOMMENDATION PARA 4, REF A. HOWEVER, REFERENCE TO A TRANSFER OR PASSAGE OF TITLE IS NEITHER NECESSARY NOR DESIRABLE. MOST U.S. BASE RIGHTS AGREEMENTS RECOGNIZE HOST GOVERNMENT OWNERSHIP OF THE LANDS AND PERMANENT CONSTRUCTIONS THEREON WITHOUT REFERRING TO ANY TRANSFER OR PASSAGE OF TITLE (E.G., SPAIN). PERMANENT CONSTRUCTIONS ARE PART OF THE REAL PROPERTY, AND ALL WE NEED DO IS MAKE IT CLEAR IN NEW AGREEMENT THAT PHIL OWNERSHIP OF LAND INCLUDES PERMANENT BUILDINGS AND OTHER PERMANENT CONSTRUCTIONS. CONGRESSIONAL APPROVAL OF NEW AGREEMENT WILL REMOVE ANY DOUBTS ABOUT THE AUTHORITY FOR RELINQUISHMENT OF ANY U.S. PROPERTY RIGHTS RETAINED IN 1947 MBA.

2. USDEL IS AUTHORIZED TO TABLE FOLLOWING AMENDMENT OF

PARA 1.A OF U.S. DRAFT ARTICLE XVII SET FORTH IN REF B. OTHER PARAGRAPHS OF ARTICLE XVII WILL REMAIN AS SET FORTH IN REF B. QUOTE 1.A WITHOUT PREJUDICE TO THE RIGHTS OF USE CONFERRED ON THE UNITED STATES BY THE PHILIPPINES UNDER THE TERMS OF THIS OR OTHER AGREEMENTS, ALL LANDS ON THE FACILITIES, INCLUDING ALL BUILDINGS AND OTHER PERMANENT CONSTRUCTIONS THEREON, ARE THE PROPERTY OF THE PHILIPPINES. UNQUOTE. (FYI: "FACILITIES" MUST REFER TO A DEFINITION ULTIMATELY ACCEPTABLE TO THE U.S.).

3. SINCE USG WAIVED ANY CLAIM TO RESIDUAL VALUE IN ARTICLE XVII OF 1947 MBA, WE DO NOT HAVE A SOUND BASIS FOR FORCING THAT ISSUE. UNDER ABOVE QUOTED FORMULATION, IT IS NOT NECESSARY TO EXPRESSLY WAIVE RESIDUAL VALUE, BECAUSE RECOGNITION OF PHIL OWNERSHIP WITHOUT RESERVATION OF RESIDUAL VALUE ACCOMPLISHES SAME RESULT. ALTHOUGH WE WOULD PREFER NOT TO HIGHLIGHT ISSUE, IF PHILS TAKE POSITION THAT NEW PARA 1.A ABOVE DOES NOT CLEARLY APPLY TO FUTURE CONSTRUCTION, THE WORDS "NOW OR HEREAFTER ERECTED" MAY BE CONSIDERED FOR INSERTION BETWEEN "CONSTRUCTIONS" AND "THEREON."

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 177759

4. DELEGATION SHOULD BE AWARE THAT OSD (I AND L) IS ALSO INTENSIVELY EXPLORING THE RAMIFICATIONS RELATED TO COMMITTING FUNDS FOR NEW CONSTRUCTION OR FOR MAINTENANCE, ALTERATION OR IMPROVEMENT OF BUILDINGS THAT WE DO NOT OWN. WE WILL NEED TO INSURE THAT WE HAVE A REGIME WHICH PERMITS US TO COMMIT SUCH FUNDS. OUR INSTALLATIONS AND LOGISTICS PEOPLE ARE RESEARCHING THE GERMAN MODEL INVOLVING CUSTODY RECEIPTS FOR BUILDINGS, AND WOULD

WELCOME USDEL INPUTS.

5. TO SUM OUR THOUGHTS ON THIS VERY SENSITIVE MATTER, WE HAVE THE IMPRESSION FROM YOUR REPORTING THAT PHILS ATTACH THE SAME KIND OF IMPORTANCE TO TITLE THAT WE ATTACH TO USE OF FACILITIES, COMMAND, OPERATIONAL FLEXIBILITY, AND CRIMINAL JURISDICTION OVER DUTY CASES. ROMUALDEZ ASKED YOU TO PRESENT A "BILL", AND YOU HAVE EXPERTLY EXPLOITED THE SO-CALLED FINANCIAL IMPLICATIONS OF THIS OFFER. THE EXPLICIT RECOGNITION OF PHIL OWNERSHIP OF BUILDINGS AND OTHER PERMANENT CONSTRUCTIONS IS NOT AN EASY MOVE FOR US TO MAKE, BUT WE ARE PREPARED TO DO SO. IN RETURN WE EXPECT REASONABLE ACCOMMODATION OF OUR NEEDS IN THE ABOVE AREAS.

6. THE LANGUAGE IN PARA 2 ABOVE REPRESENTS A VERY DELICATE BALANCE OF COMMUNITY INTEREST HERE, AND ANY PHILIPPINE PRESSURE FOR AN EXPLICIT TRANSFER OF TITLE, OR RESTRICTIONS ON OUR ABILITY TO MODIFY BUILDINGS IN

FACILITIES GRANTED FOR U.S. USE, WOULD UPSET THAT BALANCE. SIMILARLY AS SET FORTH IN OUR DRAFT, WE EMPHASIZE IMPORTANCE OF BEING FREE FROM ANY OBLIGATION TO RESTORE BUILDINGS USED BY USG. KISSINGER

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, MILITARY BASE AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE177759
Document Source: CORE
Document Unique ID: 00
Drafter: LEGAL DRAFTING GROUP:BALLEN
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760276-0740
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760747/aaaabowc.tel
Line Count: 139
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 MANILA 10216, 76 STATE 165071
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 04 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 JUN 2004 by CunninFX>; APPROVED <27 SEP 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PHILIPPINE BASE NEGOTIATIONS: TITLE TO NON- REMOVABLE STRUCTURES
TAGS: MARR, RP, US
To: MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006